

REMARKS

Status of Claims

The Office Action mailed December 22, 2009, has been reviewed and these comments are responsive thereto. Claims 1 and 7 have been amended. No new matter has been added. Upon entry of this Amendment, claims 1-12, and 18-25 will be pending in this application. Reconsideration and allowance of the instant application are respectfully requested.

Claim Rejection Under 35 U.S.C. § 103

Claims 1, 4, 5, 7, 10, 11 and 18-25 stand rejected under 35 U.S.C. 103(a) as being unpatentable over McClard (US Patent 6,438,752 B1, "McClard") in view of Wang et al. (US Patent Application Publication 2003/0028871, "Wang"), in view of Knee et al. (US Patent Application Publication 2002/0095676, "Knee"), and further in view of Klarfeld et al. (US Patent Application Publication 2003/0067554, "Klarfeld"). Applicant traverses this rejection.

Claim 1 recites, among other features, determining a plurality of demographic profiles based on the second set, wherein each demographic profile corresponds to a different behavior peak and wherein each behavior peak and each demographic profile is assigned to a different user. None of the cited references teaches or suggests these features.

The Office relies on Klarfeld as teaching this feature and responds to Applicant's previously submitted remarks by asserting that "[b]ased on the distribution of these records ("peaks") the system creates user profiles." P. 2 (citing paras. [0226]-[0235]). Even assuming, without conceding, that Klarfeld describing creating user profiles based on records, the Office Action's assertion that Klarfeld describes creating user profiles based on *behavior peaks* is entirely unsupported. For example, Klarfeld's illustration in FIG. 36 does not indicate any identification of behavior peaks or reliance thereon in creating user profiles. Klarfeld's corresponding description is similarly deficient. Additionally, not only does Klarfeld fail to teach or suggest the use of behavior peaks in creating user profiles, Klarfeld also lacks a teaching or suggestion that *each behavior peak and each demographic profile is assigned to a different*

user, as is also recited in claim 1. Accordingly, Applicant respectfully submits that claim 1 is allowable over the cited combination of references for at least the above reasons.

Independent claim 7 recites language similar to claim 1 and is allowable for at least the same reasons as discussed above with respect to claim 1 and further in view of the additional novel and non-obvious features recited therein.

Claims 4, 5, 18, 20 and 24 depend from claim 1, and claims 10, 11, 19, 21 and 25 depend from claim 7, and are thus allowable for at least the same reasons as their base claims and further in view of the additional novel and non-obvious features recited therein. For instance, claims 5 and 11 recite, among other features, removing a category from the second set in response to the broadcasted program viewing device not being tuned, for a period of time at least equal to a second predetermined threshold, to at least one broadcasted program predetermined to be in the category from the second set. The Office relies on Knee for allegedly describing this feature. However, contrary to the Office's assertions, there is no teaching or suggestion in Knee, or the other cited documents, of removing a category from the second set as recited in claims 5 and 11. At most, Knee describes "'refreshing' the values of the demographic categories for the user on a periodic basis." See para [0044] (emphasis added). However, there is no teaching or suggestion **removing** a category from the second set in response to the broadcasted program viewing device not being tuned, for a period of time at least equal to a second predetermined threshold, as recited in claims 5 and 11. Indeed, Knee states that "if it has been seven days since the last user input affecting the sports fan demographic category has been received, the decay function will refresh the value for the sports fan category to a predetermined value, such as the default value for the demographic category." para. [0045]. Clearly, there is no teaching or suggestion by Knee of **removing** the category. The refresh of a value for the category is inapposite to the removal of the category. Accordingly, for at least this additional reason, claims 5 and 11 are allowable over the cited combination of references.

Claims 2, 3, 8 and 9 stand rejected under 35 U.S.C. 103(a) as being unpatentable over McClard in view of Wang, in view of Knee further in view of Klarfeld as applied to claims 1 and 7 above, and further in view of Ellis et al. (US Patent Application Publication 2003/0020744), herein Ellis. Applicant traverses this rejection.

Claims 2 and 3 and 8 and 9 depend from claims 1 and 7, respectively, and are allowable for at least the same reasons as discussed above with respect to claims 1 and 7. The addition of Ellis fails to cure the deficiencies of McClard, Wang, Knee and Klarfeld and thus, Applicant submits that claims 2, 3, 8 and 9 are patentably distinct from the cited combination of references.

Claims 6 and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over McClard in view of Wang, Knee, Klarfeld and Schaffer *et al.* (U.S. Patent Pub. No. 2002/0104087, "Shaffer"). This rejection is respectfully traversed.

Claims 6 and 12 are dependent on claims 1 and 7, respectively, and are thus allowable over McClard, Wang, Knee and Klarfeld for at least the reasons previously discussed. The addition of Shaffer fails to cure the deficiencies identified above with respect to claims 1 and 7. Accordingly, claim 6 and 12 are allowable for at least the same reasons.

Conclusion

All rejections having been addressed, Applicant respectfully requests entry of the present amendment and notification of allowance. If any fees are due, or if an overpayment has been made, the Director is authorized to debit or credit Deposit Account No. 19-0733. Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the number set forth below.

Respectfully submitted,

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